IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1036 OF 2007
AND
WRIT PETITION NO. 1028 OF 2007.

Bhagwan Kondaji Ganjave & Ors..... ....Petitioners
V/s
Sau.Indubai Govind Jadhav & Ors. (W.P.No.1036/07
Govind Umaji Jadhav & Ors.. (W.P.1028/07)..... .....Respondents.

Mr.U.B.Nighot, Adv. For the petitioners.

Mr.Ganesh B. Bhujbal, Adv. For respondent No.1.

CORAM: A.P.DESHPANDE, J.
31/8/07

PC:

The respondent No.1 instituted a suit for partition, separate possession and injunction against the defendants. The present petitioners are original defendant Nos.1, 2, 4 to 12, 16 and 17. It is not in dispute that the present petitioners/defendants were served with the summons on 22.3.06 and the summons were made returnable on 28.3.06. On 28.3.06 the present petitioner4s filed vakalatnama of the advocate and the next date fixed was 18.4.06. On 18.4.06 the present petitioners sought adjournment on the ground that their advocate had gone out of station. Application for adjournment was rejected and further order came to be passed that the

defendants be proceeded against without written statement. The learned counsel for the petitioners has pointed out that within less than month from the date of service of summons the no written statement order has been passed. Only one adjournment was sought that too on the ground of inconvenience of the advocate and the same was rejected. Thereafter the present petitioners prepared the written statement and moved an application for setting aside the order of no written statement dated 18.4.06. Along with the said application written statement was also tendered but the Court did not accept the same and proceeded to reject the application for setting aside the no written statement order. Hence present petitioners have challenged the order date 18.4.06 and the order dated 5.12.06 passed by the trial Court. It is submitted that on account of undue haste on the part of the Judge of the trial Court miscarriage of justice has occurred in as much as the present petitioners who had right, title and interest in the immovable property are denied even an opportunity to contest the suit. It is prayed that in the interest of justice impugned order be quashed and set aside and the defendants be permitted to file written statement. Learned counsel appearing for respondent No.1 supports the order passed by the trial Court and submits that the petitioners should have filed written statement on 18.4.06. It is then submitted that if at all an

opportunity is to be granted to the petitioners to file written statement same be subject to costs.

2. Having regard to the facts and circumstances narrated herein above, I am of the clear view that the cause of justice would advance by quashing the impugned orders. Refusing to interfere with the impugned orders would result in miscarriage of justice and deny a reasonable opportunity to the petitioners to defend the suit. In the result writ petitions are allowed. Impugned orders dated 18.4.06 and 5.12.06 are quashed and set aside. The petitioners are permitted to file written statement on record of the trial Court a copy of which is annexed to the present petition and the trial Court is directed to accept the written statement as legally tendered. Accepting the written statement as legally tendered the trial Court shall proceed to decide the suit in accordance with law. This order is subject to payment of costs of Rs.3000/- in each petition. Costs to be deposited in the trial Court within a period of four weeks from today. Rule made absolute in above terms.

31.8.07